IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE THIRTEENTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION NO : 24513 of 2002

Between:

R. Samba Murthy, S/o. Late Sri. R. Lakshmi Narasimham, R/o. Paparajuthota

H.No.15-357, Chirala –523 155, Prakasam District.

.... PETITIONER

AND

1. State Bank of India, Corporate Office, Mumbai – 400 021

Rep.by its Deputy Managing Director and Corporate Development Officer.

2. The Chief General Manager and Appointing Authority, State Bank of India

Local Head Office, Hyderabad.

3. The General Manager (Development & Personal Banking), Disciplinary

Authority, State Bank of India, Bank Street, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order, direction or writ particularly one in the nature of Writ of Certiorari, after calling for the records, quash the orders issued by the Chief General Manager vide proceedings No.VIG/2957 dated 11.03.1997 as confirmed by the order of the Appellate Authority dated 14.08.2002 communicated to the petitioner vide proc No.A&R/HYD-252/9 dated 16th August, 2002 as illegal, arbitrary and violative of principles of natural justice and direct the respondent bank to reinstate the petitioner with all consequential benefits including arrears of salary

Counsel for the Petitioner: (PARTY-IN-PERSON) R. SAMBA MURTHY
Counsel for the Respondents: MR.K.SRINIVASAMURTHY

The Court made the following order:

ORDER:

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The petitioner questions the action of the respondents in removing him from service vide proceedings No.VIG/2957 dated 11.03.1997 of the third respondent as confirmed in proceedings No.VIG/A&R/HYD-252/628 dated 29.01.1988 and reconfirmed in proceedings No.A&R/HYD-252/9 dated 16.08.2002 by the Appellate Authority-first respondent.

The petitioner was initially appointed as Clerk-cum-Typist by the State Bank of India on 29.11.1973. Subsequently, he was promoted as Deputy Manager Scale II with effect from 01.08.1986 and later he was posted as Manager to Payakaraopet branch in 1991. He worked as Branch Manager from August 1991 to April 1992. He was transferred from Payakaraopet branch in April 1992 and posted in Visakhapatnam Zonal Office. While so, he was issued a show cause notice dated 05.06.1992 alleging that certain irregularities have been committed by him while he was working as a Branch Manager at Payakaraopet branch. After submission of petitioner's explanation, disciplinary proceedings have been initiated against petitioner and based on the allegations framed the following charges:

CHARGE I

> "You had processed, sanctioned and disbursed loans/advances to groups of borrowers under Cash Credit (SBF) and Agricultural Segments (including loans under DIR Scheme) during the period from 22.02.1992 to 07.04.1992 in haste and hurry without involving the Field Officer working at the Branch. Thus you had deliberately violated the various instructions of the Bank in the sanction, disbursal, conduct and follow-up of loans/advances and in the process not only exposed the Bank to grave risk of financial loss but also passed on the pecuniary benefit to the borrowers with malafide intention."

CHARGE II

> "You had demanded and accepted illegal gratification in cash consideration for sanction of the loans/advances from certain borrowers. Thus you had tarnished the image of the Bank."

As against allegation-VIII with regard to Charge No. I the disciplinary authority held that the following allegation-VII: that

"Though you were instructed by the Chief Manager (Advances), Zonal Officer, Visakahapatnam, over telephone on 25.03.1992 not to sanction any loan except the loans under SEEUY, IRDP, DIR and AGRICULTURE, you had continued to sanction and disburse loans/advances other than the schemes mentioned above, in utter disregard of the instructions from your Controlling Officer", is not proved.

The allegation-IV that most of the borrowers had not started the activity and misutilised the loan amounts is held to be proved only in part and found that there is evidence to amply prove that the borrowers have utilized the loan amounts. There is also evidence to show that there have been some recoveries from the loanees. The other allegation as regards to Charge-I that he had processed, sanctioned and disbursed the loans/advances to a group of borrowers and agriculturists without the involvement of the Field Officer working at the branch is proved.

Insofar as Charge-II is concerned the Enquiry Officer held that the said charge has not been proved. In respect of the allegations proved for charge-I the disciplinary authority-third respondent after taking the explanation of the petitioner imposed penalty of removal from service in exercise of powers vested in him under Rule 67 of State Bank of India Officers Service Rules, vide his order dated 11.03.1997.

Aggrieved by the said order the petitioner filed an appeal before the appellate authority. The appellate authority by order dated 29.01.1998 confirmed the order of imposing the penalty of removal from service. The petitioner questioned the aforesaid order in WP.No.13201 of 1998 on the file of this Court and the Learned Single Judge of this Court by order dated 08.08.2000 allowed the writ petition setting aside the said orders on the ground that the entire basis for the charge sheet is the investigation report conducted by an Officer and the said report though asked by the petitioner for the purpose of his defence assistance was not furnished to him. The respondents refused to furnish the report on the ground that it is a privileged document and the disciplinary authority perused the said report and framed the charges. The said investigation report, basing on which charge sheet has been issued, is a vital document for the petitioner to defend his case and the departmental enquiry made by the department is not transparent and the action of the respondent is camouflaged. Therefore, there is violation of principles of natural justice as reasonable opportunity was not given to the petitioner and the enquiry is also not fair and transparent. The learned Single Judge accordingly held that non-furnishing of the investigation report is fatal to the case of the bank and enquiry conducted without furnishing the enquiry report is held to be illegal and violative of principles of natural justice. Consequently, the orders of the disciplinary authority and appellate authority are set aside.

Aggrieved by the order of the learned Single Judge the respondent-bank filed WA.No.1167 of 2000. A Division Bench of this Court by judgment dated23.07.2001 held that the order of the learned Single Judge in allowing the writ petition on the sole ground that the delinquent officer was not supplied with the required document to meet the charges is unsustainable as the said document is not required to meet the charges. However, several other questions were raised before the learned Single Judge, which were not at all dealt with. The Division Bench remitted the matter for consideration of said WP.No.13201 of 1998 afresh by the learned Single Judge.

Thus, the matter was heard elaborately by the Hon'ble Sri Justice L. Narasimha Reddy and disposed of the said WP.No.13201 of 1998 by order dated 26.06.2002 holding that the aforesaid charge i.e., Charge-I relates to the procedural

aspects on the part of the petitioner in sanctioning certain loans and Charge-II was not at all proved. There is a failure on the part of the disciplinary authority as well as appellate authority in imposing the quantum of penalty on the petitioner. Accordingly, the order of the appellate authority confirming the order of the disciplinary authority is set aside and the appellate authority is directed to the consider the appeal preferred by the petitioner afresh and dispose of the same dealing with the question as to whether the penalty imposed upon the petitioner is excessive and pass appropriate orders.

In pursuance to the order of the learned Single Judge dated 26.06.2002 in WP.No.13201 of 1998 the appellate authority considered the appeal of the petitioner afresh and again dismissed the same vide its order dated 16.08.2002 holding that he has applied his mind as regards to the gravity of misconduct established warrants termination of service. In the normal course of business of lending by the Branch Manager, there could be bad loans causing loss to the bank. In such cases, if the norms, guidelines and instructions laid down by the bank have been adhered to, no action is initiated against the concerned officer. On the contrary, if there are violations of the instructions, it calls for suitable action so that it would have a demonstrative effect on others against such acts. As regards to the quantum of penalty the appellate authority was of the view that the irregularities/acts of commission and omission held against the petitioner are not in the nature of normal course of lending and though a Field Officer was posted at the branch to process new loans, he was not involved and loans were processed and sanctioned in haste by the petitioner. The way this irregularity is committed by the petitioner is not procedural or minor in nature but is very grave in content and also resulting in financial loss to the bank. Accordingly, the appellate authority was of the opinion that petitioner's continuance would be detrimental to the interest of the bank and therefore imposing the penalty of removal from service is only an appropriate punishment.

I have perused the relevant records. The learned Single Judge while remitting the matter to the appellate authority by judgment dated 26.06.2002 in WP.No.13201 of 1998 clearly held that Charge-I relates to procedural lapses on the part of the petitioner in sanctioning certain loans and therefore, it requires to be

reconsidered as to the quantum of penalty imposed on the petitioner is excessive or disproportionate. But the appellate authority without discussing the contentions of the petitioner as regards to the procedural irregularities, which are not serious in nature, and also without discussing the financial loss said to have been caused to the bank reiterated the same view confirming the award of punishment of removal from service.

The petitioner submits that since it was his first posting, after completion of training as Branch Manager, at Payakaraopet branch in August 1991, he had taken due care to improve the business and showed profits to the branch by renewing the advances and sanctioning loans, cash credits, agricultural loans, DIR loans etc. The relevant returns were submitted to the Controlling Authority and had also taken steps to the best of his ability for recovery of the loans sanctioned. He was able to achieve highest rating in the branch during December 1991.

It is further submitted that the Field Officer was not at all examined as regards the allegation of his non-involvement in advancing the loans and therefore, the allegations said to have been proved against him are also without any basis. However, it is stated that the bank has not sustained any financial loss and the bank has recovered almost all the amounts. Therefore, imposing the major penalty of removal from service is excessive, arbitrary and disproportionate. In the writ affidavit the petitioner specifically stated that the Field Officer was not at all examined during the course of the enquiry and the said officer working at the relevant point of time was also not examined. There is no iota of evidence to show that the petitioner has not involved the Field Officer while processing the loan applications and sanctioning the same in a haste manner. It is further submitted that the Field Officer was involved and even assuming for the sake of argument that the Field Officer was not involved in processing and sanctioning the loans the bank has not sustained any loss due to the action of the petitioner. The defaulters loan amounts were also cleared and there was also no financial loss caused to the bank. This averment made in the writ affidavit has not been contraverted in the counter filed by the respondents.

The respondents have only stated in the counter that it is not open for the petitioner to question the said order of the disciplinary authority which was confirmed by the appellate authority forgetting the fact that the learned Single Judge of this Court remitted this matter to the appellate authority to consider the quantum of penalty that is imposed based on the proportionality of the charges.

The question that arises for consideration is whether the punishment imposed by the disciplinary authority as confirmed by the appellate authority is disproportionate, excessive and shocks the conscience of the Court. In this regard the Apex Court in the case of **B.C.CHATURVEDI v. UNION OF INDIA** held in Para 18 as follows:

> "A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

The said view was reiterated in the later judgment of the Supreme Court in the cases of **SHRI BHAGWAN LAL ARYA v/s COMMISSIONER OF POLICE, DELHI AND OTHERS** and **DEV SINGH v/s PUNJAB TOURISM DEVELOPMENT CORPORATION LIMITED.**

As the petitioner has been fighting a legal battle from 05.06.1992 the date on which the show cause notice was issued based on the said irregularities, the disciplinary proceedings ended in 1997 resulting in petitioner's removal from service, which was upheld by the appellate authority in 1998, which was questioned on the file of this Court in WP.No.13021 of 1998, and the same was allowed initially, but the same was set aside by the Division Bench and remitted the matter to the learned Single Judge, and the learned Single Judge remitted the matter to the appellate authority by

judgment dated 26.06.2002 to impose appropriate penalty, I am of the opinion that it is not just and proper to remit the matter once again to the appellate authority to impose appropriate punishment.

A perusal of the records show that the allegations proved in respect of Charge-I are not grave in nature and I am of the view that the punishment of removal from service imposed on the petitioner is not only excessive but also disproportionate, and the punishment imposed by the disciplinary authority confirmed by the appellate authority shocks the conscience of the Court and therefore, it would be appropriate to mould the relief as I am of the opinion that it is one of the exceptional cases where an appropriate punishment can be imposed by this Court itself instead of directing the appellate authority to reconsider the penalty imposed.

Having regard to the facts and circumstances of the case, I think to avoid further prolonged litigation it would be appropriate if I modify the punishment. On the said basis, while upholding the finding of misconduct against the petitioner, a punishment of compulsory retirement is imposed on the petitioner, which will meet the ends of justice. Accordingly, the punishment of removal from service imposed by the respondents on the petitioner is modified instead the petitioner is imposed a punishment of compulsory retirement.

The writ petition is accordingly disposed of. No order as to costs.

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(V. ESWARAIAH, J)

September 13, 2004

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To

1. State Bank of India, Corporate Office, Mumbai – 400 021

Rep.by its Deputy Managing Director and Corporate Development Officer.

2. The Chief General Manager and Appointing Authority, State Bank of India

Local Head Office, Hyderabad.

3. The General Manager (Development & Personal Banking), Disciplinary

Authority, State Bank of India, Bank Street, Hyderabad.

4. Two CD Copies.